

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VENICE PI, LLC,

Plaintiff,

V.

MICHAEL SMITH,

Defendant.

## C17-1211 TSZ

## MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiff has settled with or voluntarily dismissed its claims against all but one defendant, namely Michael Smith. Smith has asserted counterclaims for declaratory judgment of non-infringement and abuse of process. On May 22, 2018, the Court struck certain affirmative defenses asserted by Smith, but denied plaintiff's motion to dismiss Smith's counterclaims. Minute Order (docket no. 62). Plaintiff's answer to Smith's counterclaims was due on June 5, 2018, see Fed. R. Civ. P. 12(a)(4)(A), but no answer was timely filed. Smith, who is proceeding pro se, has not moved for entry of default against plaintiff. Plaintiff has been on notice since October 19, 2018, that its copyright infringement claim might be dismissed pursuant to *Cobbler Nevada, LLC v. Gonzales*, 901 F.3d 1142 (9th Cir. 2018). See Minute Order (docket no. 69). In a related action, the Court dismissed a similar claim brought by plaintiff, but without prejudice and with leave to amend. See Order (C17-1160, docket no. 58). The Court makes the same ruling in this matter. Plaintiff's Amended Complaint, docket no. 17, is DISMISSED without prejudice and with leave to amend.

(2) Any Second Amended Complaint shall be filed and served within fourteen (14) days of the date of this Minute Order. In addition, plaintiff shall show cause within fourteen (14) days of the date of this Minute Order why default should not be entered against it for failing to timely answer Smith's counterclaims.

(3) The Clerk is directed to send a copy of this Minute Order to all counsel of record and to defendant pro se Michael Smith.

Dated this 19th day of June, 2019.

## William M. McCool

### Clerk

s/Karen Dews

## Deputy Clerk